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JOSEPH F. SPANIOLO, JR.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1990

JOSEPH DANIEL BROCKINGTON and
SYLVIA BROCKINGTON,
Petitioners,

v.

CERTIFIED ELECTRIC, INC.,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

**BRIEF FOR THE RESPONDENT
IN OPPOSITION**

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QUESTION PRESENTED

Whether the lower courts correctly applied the Supreme Court's "maritime but local" rule in deciding that the exclusive remedy provision of Georgia's Workers' Compensation Act may validly bar an employee's action against his employer, when application of state law recognizes the State's interests in regulating the liability between employer and employee but does not interfere with a substantial admiralty remedy or disrupt the uniformity of general maritime law.

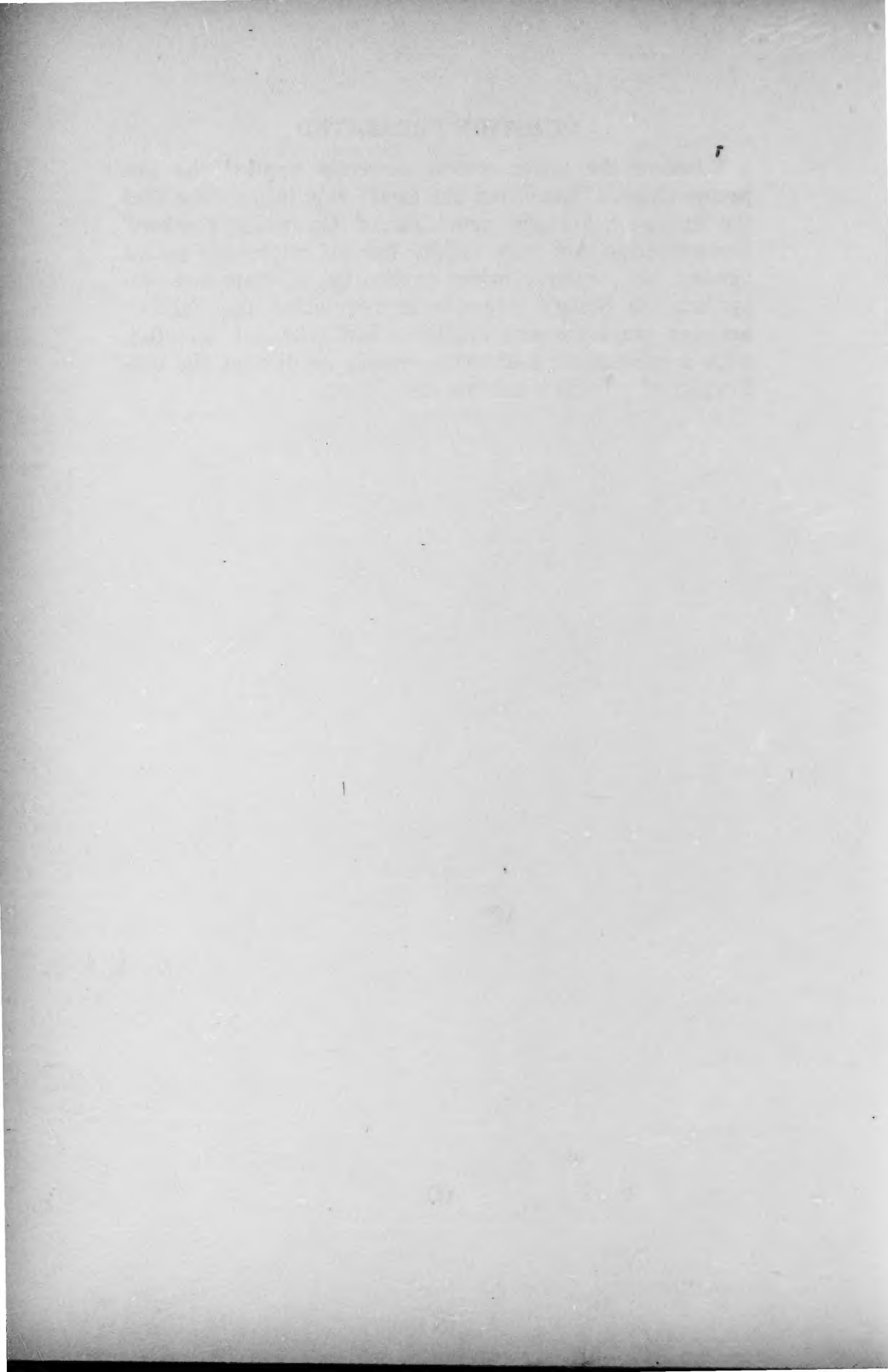


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**BRIEF FOR THE RESPONDENT
IN OPPOSITION**

The respondent Certified Electric, Inc., respectfully requests that the Court deny the petition for a writ of certiorari of the petitioners Joseph and Sylvia Brockington.¹

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals, Eleventh Circuit, on June 26, 1990, affirmed the grant of summary judgment for Certified Electric, Inc., made by the Southern District of Georgia on April 18, 1989. *Brockington v. Certified Electric, Inc.*, 903 F.2d 1523 (11th Cir. 1990). The order of the district court was not separately published but is set out in pertinent part as an appendix to

¹ Other parties to the litigation in the lower courts were Gerald Raine and David Ferrell. Certified Electric, Inc., has no parent or subsidiary company.

the appellate decision. The petition for rehearing and the suggestion of rehearing *en banc* were denied by the appellate court on August 16, 1990.

JURISDICTION

The Brockingtons invoke 28 U.S.C. § 1254(1) as their ground for jurisdiction. The case, however, presents no special and important reasons requiring a grant of certiorari. Sup. Ct. R. 10. The decision of the court of appeals in the present case is not in conflict with either the decisions of other courts of appeals or with the decisions of this Court. Prior decisions of this Court have settled that where the work activities of an injured employee have only an incidental relation to maritime navigation or commerce, the rights, obligations, and liabilities of the parties are governed by state law. The Court should deny the petition for a writ of certiorari.

In the conclusion of their petition, the Brockingtons state that "the lower courts are in error on an important point of constitutional law." Nowhere in the petition, however, do the Brockingtons specify how the case assumes constitutional proportions. Apparently, petitioners confuse the question of jurisdiction with that of an available remedy or remedies. Certified Electric, Inc., does not dispute the jurisdiction of the district court. This case does not present a constitutional question.

STATUTORY PROVISIONS INVOLVED

O.C.G.A. § 34-9-11 (1988) :

The rights and the remedies granted to an employee by this chapter shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents, or next of kin, at common law or otherwise, on account of such injury, loss of service, or death; provided, however, that no employee shall be deprived of any right to bring an action against any third-party tort-feasor, other than an employee of the same employer or any person

who, pursuant to a contract or agreement with an employer, provides workers' compensation benefits to an injured employee, notwithstanding the fact that no common-law master-servant relationship or contract of employment exists between the injured employee and the person providing the benefits.

STATEMENT OF THE CASE

A. Statement of Proceedings and Disposition in the Courts Below.

Plaintiffs/petitioners Joseph Daniel Brockington and Sylvia Brockington filed their complaint in federal district court, Southern District of Georgia, on May 6, 1988, seeking damages for personal injury and loss of consortium under the Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 901 *et seq.*) and under general maritime law against Mr. Brockington's employer, defendant/respondent Certified Electric, Inc. ("Certified"). Gerald Raine was also named as a defendant. Certified answered the complaint, asserting that Mr. Brockington did not fall within the coverage of the Longshore Act, that the Brockingtons' exclusive remedy was under state workers' compensation law, and in the alternative, that if the Brockingtons fell within the coverage of the Longshore Act, benefits under that Act also served as their exclusive remedy.

After the parties had substantially completed discovery, Certified moved for summary judgment, maintaining that Mr. Brockington was not covered by the Longshore Act and that, even if he were, the complaint for personal injury and loss of consortium was barred by the exclusive remedy provisions contained in state and federal law. Mr. Raine simultaneously moved for summary judgment against the Brockingtons.

On April 18, 1989, the district court entered an order granting Certified's motion for summary judgment. The district court initially denied summary judgment for

Mr. Raine, but on reconsideration entered a supplemental order granting Mr. Raine's motion. The Brockingtons appealed.

The United States Court of Appeals, Eleventh Circuit, affirmed the decision of the district court and subsequently denied the petition for rehearing and the suggestion of rehearing *en banc*. The Brockingtons now seek review of the decisions foreclosing their ability to proceed against Certified.

B. Statement of Facts.

The Brockingtons are residents of Brunswick, Georgia. Mr. Brockington was employed by Certified, a small, family-owned electrical contracting business located in Brunswick, Georgia. Mr. Brockington began working for Certified in November of 1975 as a land-based electrician. Mr. Brockington's duties with Certified involved wiring houses and commercial buildings; he was required to dig ditches, run conduit, pull cable, and wire and install electrical fixtures. Mr. David Ferrell, Mr. Brockington's co-employee, was also employed by Certified as a land-based electrician.

Certified's job activities are land-based. Because of the increasing development of Georgia's barrier islands, some of which are located near Brunswick, Certified is occasionally required to send its employees to perform land-based electrical work on islands that are inaccessible by automobile. Work on the islands is infrequent. Mr. Brockington testified that he could remember only two other occasions in over ten years of employment when he had been required to commute to a job site over water. In one project on Cumberland Island, Georgia, he had been transported by airplane; in another, on Sapelo Island, Georgia, he had been transported on board a local ferry, the SAPELO QUEEN.

In May of 1984, Certified contracted with the University of Georgia to do electrical wiring at a laboratory on

Sapelo Island. Certified originally planned to use the local ferry to transport men and electrical materials to the island. Mr. Ferrell suggested, however, that he be allowed to use his personal 16-foot motor boat to transport materials to the islands and thereby avoid the restrictive schedule of the ferry. Mr. Emory Young of Certified agreed to allow Mr. Ferrell to use his boat.

On May 15, 1985, Mr. Brockington met Mr. Ferrell at a marina in nearby Darien, Georgia, where the two men loaded electrical materials into Mr. Ferrell's boat. It was Mr. Brockington's first trip to the job site on Sapelo Island. The two men boarded the boat and began their trip to the job site, with Mr. Ferrell operating the vessel and Mr. Brockington seated as a passenger. Although the testimony of the two differs as to whether the accident occurred going to or coming from Sapelo Island, at some point during the trip the boat entered a large river, apparently part of the Intracoastal Waterway. Once in the waterway, the boat crossed a series of waves, the wake caused by a passing motor yacht, allegedly operated by Mr. Raine. When Mr. Ferrell's boat met the wake, Mr. Brockington's seat became dislodged and slid to the back of the boat. After this incident, Mr. Brockington complained of back pain, and the two men returned to the marina.

During the next few months, Mr. Brockington's work hours decreased until he eventually stopped working. He was later diagnosed as having a compression fracture in the area of his twelfth thoracic vertebra. As a result of his back injury, Mr. Brockington applied for and received workers' compensation benefits from Certified under the Georgia Workers' Compensation Act. Mr. Brockington received at least \$26,000.00 in medical benefits and approximately \$20,000.00 in compensation benefits under Georgia law. With the assistance of counsel, Mr. Brockington entered into an agreement with Certified in which he settled his worker's compensation claim

for an additional \$40,000.00, plus one year of open medical benefits. As a condition of settlement, Mr. Brockington's counsel insisted that the settlement contract specify that the agreement did not by its operation release any other claims Mr. Brockington might have against Certified.

SUMMARY OF THE ARGUMENT

In May of 1985, petitioner Joseph Daniel Brockington, a land-based electrician, was injured while traveling to Georgia's Sapelo Island by boat. He subsequently applied for and received approximately \$90,000.00 in workers' compensation benefits under the law of Georgia. He and his wife now seek to sue his employer, defendant/respondent Certified Electric, Inc., under general maritime law on a negligence theory and for loss of consortium. The Brockingtons contend that Georgia's exclusive remedy statute, codified at O.C.G.A. § 34-9-11, does not bar their claim against Certified because of the supremacy of federal maritime remedies over conflicting state law.

The Supreme Court, however, has recognized and given effect to a state exclusive remedy statute, if the application of state law will not interfere with a substantial admiralty right or disrupt the uniformity of general maritime law. See *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469 (1922). The Brockingtons' claims against Certified for negligence on a *respondeat superior* theory, and Mrs. Brockington's loss of consortium claim which arises thereunder, represent a garden variety state tort claim, and do not involve a substantial admiralty right. See *Palestina v. Fernandez*, 701 F.2d 438 (5th Cir. 1983). In addition, Georgia's exclusive remedy statute is in conformity with, rather than in conflict with, the analogous federal maritime remedy contained in the Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 901, *et seq.*). See *Murphy v. Woods Hole, Martha's Vineyard and Nantucket Steamship Auth.*,

545 F.2d 235 (1st Cir. 1976). The State of Georgia has a significant interest in regulating liability between employer and employee, and the exclusive remedy feature implements a major policy consideration underlying Georgia's workers' compensation law. *Karimi v. Crowley*, 172 Ga. App. 761 (1984). By balancing the relevant state and federal interests involved, it is apparent that state law should be applied to the liability between employer and employee which arises in an accident which occurs within the state's borders and which involves local, non-maritime parties. See *P. J. Carlin Const. Co. v. Heaney*, 299 U.S. 41 (1936).

ARGUMENT

I. JURISDICTION AND REMEDY ARE DISTINCT ISSUES

The questions of jurisdiction and remedy are distinct, although sometimes confused. "[T]here sometimes is difficulty in distinguishing between matters going to the jurisdiction and those determining merits." *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469, 477 (1922). In the present case, the district court concluded that it had admiralty jurisdiction. Certified does not contest that conclusion. What is at issue here is the remedy to be afforded the Brockingtons and the source of that remedy, not jurisdiction.

II. FEDERAL AND STATE LAW ARE BOTH SOURCES OF ADMIRALTY LAW

The exercise of admiralty jurisdiction by the federal courts has never meant that all state or local interests are thereby displaced. *E.g.*, *Kossick v. United Fruit Co.*, 365 U.S. 731, 739 (1961). Rather, the general maritime law is drawn from both federal and state sources. *E.g.*, *East River Steamship Corp. v. Transamerica Delaval Inc.*, 476 U.S. 858, 864 (1986). Both federal and state legislation provide policy guidance for federal courts exercising admiralty jurisdiction. *Miles v. Apex Marine*

Corp., 59 U.S.L.W. 4001, 4003-4006 (U.S. Nov. 6, 1990). The process of shaping admiralty remedies is one of accommodation between overlapping federal and state concerns. *Kossick*, 365 U.S. at 739. The claim of federal supremacy in admiralty matters is adequately served by the availability of a federal forum in the first instance and by the possibility of review in this Court to provide assurance that the federal interest has been correctly assessed and accorded due weight. *Id.*

States have the power to modify or supplement admiralty law. *E.g.*, *Western Fuel Co. v. Garcia*, 257 U.S. 233, 241 (1921). Nevertheless, "a state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretive decisions of this Court." *Pope & Talbot, Inc. v. Hawk*, 346 U.S. 406, 410 (1953). In the present case, however, the application of state law has not deprived the Brockingtons of "any substantial admiralty rights." The state remedy is not in contravention of any controlling acts of Congress nor of any interpretive decisions of this Court.²

As stated, the law is well settled that state law may not deprive a person of any substantial admiralty rights as defined by the Congress or this Court. The law is also settled that where the work activities of an injured employee pertain to local matters and have only an incidental relation to navigation and commerce, then the rights, obligations, and liabilities between the parties

² The Brockingtons do not articulate nor identify with statutory or case authority "any substantial admiralty rights" that the application of Georgia law has purportedly denied them. If a principle of law were to be distilled from the facts of this case, the result would hardly seem to rise to the level of a substantial admiralty right: "A land-based employer is vicariously liable to his land-based plaintiff/employee for the negligence and/or unseaworthiness of a boat owned by a fellow land-based employee and infrequently used to transport the plaintiff over water to a land-based work site."

may be governed by local law, provided, of course, that local law does not deprive a party of a substantial admiralty right. *Sultan Ry. & Timber Co. v. Department of Labor & Indus.*, 277 U.S. 135, 137 (1928). This latter principle is sometimes known as the "maritime but local" doctrine. Although their interaction may occasionally produce some friction, the two settled principles do not conflict, and the lower courts have been able to apply them harmoniously on a case by case basis. The decisions the Brockingtons cite in their petition, as well as the decision in the present case, conform with the time-honored guidelines this Court has provided for applying the "maritime but local" doctrine. The circuits are not in conflict.

III. "MARITIME BUT LOCAL" DOCTRINE REMAINS VALID

In fashioning the "maritime but local" doctrine, the Supreme Court has recognized that a certain amount of comity should be extended to the states in areas traditionally subject to local regulation. One such area has been state workers' compensation law. In the case of *Grant Smith-Porter Ship Co. v. Rohde*, 257 U.S. 469 (1922), the Court extended the rationale of *Western Fuel Co. v. Garcia*, 257 U.S. 233 (1921), and recognized that despite the presence of admiralty jurisdiction, the district court should apply an exclusive remedy provision contained in a state workers' compensation act to the exclusion of any federal maritime remedy. The *Grant-Smith* Court reasoned that application of local law to a non-maritime employee whose injury occurred on local navigable waters would not contravene any substantial admiralty right or interfere with the uniformity of maritime law in its international and interstate relations. *Grant Smith*, 257 U.S. at 476-77. The plaintiff in *Grant Smith* was a carpenter who had been injured while working on a partially completed vessel located on the Willamette River in Oregon. *Id.* at 473-74.

The Court followed its decision in *Grant Smith* in the later cases of *Millers' Indemnity Underwriters v. Braud*, 270 U.S. 59 (1926) and *Alaska Packers Association v. Industrial Accident Commission*, 276 U.S. 467 (1928). See also, *P. J. Carlin Constr. Co. v. Heaney*, 299 U.S. 41 (1936) (Court refused to interfere with application of the workers' compensation laws to a "local" action).³ The plaintiff in *Millers' Indemnity* was a diver who drowned in the Sabine River in Texas while sawing off submerged timbers from an abandoned set of ways once used for launching ships. The Court noted that the record disclosed "facts sufficient to show a maritime tort to which the general admiralty jurisdiction would extend save for the provisions of the state Compensation Act; but the matter is of mere local concern and its regulation by the state will work no material prejudice to any characteristic feature of the general maritime law." *Millers' Indemnity*, 270 U.S. at 64-65. The Court noted that the state workers' compensation act "prescribes the only remedy; its exclusive features abrogate the right to resort to the admiralty court which otherwise would exist." *Id.* at 65.

The *Alaska Packers* case concerned a cannery employee who was injured on shore while attempting to push a stranded boat into navigable waters. *Alaska Packers*, 276 U.S. at 468. In giving effect to state law, the Court noted that the employee "was not engaged in any work so directly connected with navigation and commerce that to permit the rights of the parties to be con-

³ The *Western Fuel*, *Grant Smith*, *Millers' Indem.*, *Alaska Packers*, and *Carlin Constr.* opinions were all delivered by J. McReynolds. Likewise, J. McReynolds delivered the opinion in the case of *Southern Pac. Co. v. Jensen*, 244 U.S. 205 (1917), wherein the Court had stressed the importance of the uniformity of admiralty law. That these opinions share the same author emphasizes that the "maritime but local" doctrine is not inconsistent with the exercise of federal admiralty jurisdiction and the development of a uniform body of admiralty law.

trolled by the local law would interfere with the essential uniformity of the general maritime law." *Id.* at 469.

Following the *Grant Smith*, *Millers' Indemnity*, and *Alaska Packers* decisions, the Court could pronounce the "maritime but local" doctrine as "settled":

It is settled by our decisions that where the employment, although maritime in character, pertains to local matters, having only an incidental relation to navigation and commerce, the rights, obligations, and liabilities of the parties, as between themselves, may be regulated by local rules which do not work material prejudice to the characteristic features of the general maritime law or interfere with its uniformity.

Sultan Ry. & Timber Co., 277 U.S. at 137. Although not always denominated as such, the "maritime but local" doctrine continues to have validity in determining what remedy governs in the absence of any substantial admiralty rights. *See, e.g., Steelmet, Inc. v. Caribe Towing Corp.*, 779 F.2d 1485, 1488 (11th Cir. 1986) (comparing admiralty and state law interests); *Palestina v. Fernandez*, 701 F.2d 438, 439 (5th Cir. 1983) (admiralty jurisdiction, but state law governs "garden variety state tort claim").

The accident out of which the present case arose is one in which the "maritime but local" rule is particularly applicable. Certified is a small, family-owned business located in Brunswick, Georgia. Its two employees involved in this incident, Mr. Brockington and Mr. Ferrell, are residents of Brunswick and Darien, Georgia, respectively. Mr. Brockington acknowledges that he worked for Certified as a land-based electrician, as did Mr. Ferrell. Both men admit that their employment with Certified was not that of maritime employees. Although this incident allegedly occurred on the Intracoastal Waterway, the portion of the waterway on which it occurred was a navigable river within state territorial waters, and the

two men were traveling to an island located within the state.⁴

IV. PRESENT CASE IS CONSISTENT WITH EXISTING CASE LAW

The present case and the cases the Brockingtons cite in their petition are all consistent with the "maritime but local" doctrine. In the case of *Spencer Kellogg & Sons, Inc. v. Hicks*, 285 U.S. 502 (1932), the Court concluded that the admiralty interests involved substantially outweighed any competing state interests. The admiralty interests included the litigants' right to complete relief in an admiralty forum that had been invoked by the vessel owner.

The *Spencer Kellogg* case is distinguishable from the present case in important respects. The vessel in *Spencer Kellogg* was a 45-foot motor launch owned by the employer and used daily to ferry both employees and other passengers back and forth between a pier in New York and the employer's plant in New Jersey. *Spencer Kellogg*, 285 U.S. at 506. A safe load for the launch was not more than 60 passengers, but she frequently carried more than 80 persons. *Id.* On one excursion, the vessel struck an ice floe and sank. *Id.* at 507. At least 35 passengers drowned. *Id.* The Court expressly noted the interstate nature of the transportation, implicitly invoking the traditional maritime concern for uniformity. *Id.* at 512. In addition, many of the passengers who were injured or killed when the launch sank were not employees at all; still others were scheduled to assist in cargo discharging operations when they arrived at the plant, and were clearly maritime employees. *Id.* at 508.

⁴ O.C.G.A. § 50-2-1 (1990) provides that Georgia's coastal boundaries extend "three geographical miles from ordinary low water . . . ; including all the lands, waters, islands and jurisdictional rights within said limits; and also all the islands within 20 maritime leagues of the seacoast."

The plaintiff in *Spencer Kellogg*, the vessel owner/employer, had invoked the protection of admiralty jurisdiction under the Limitation of Liability Act. *Id.* at 506. Having sought the protection of the admiralty court, the vessel owner/employer argued that admiralty relief was inapplicable to its employees because of the exclusive remedy features of state law. *Id.* at 509. In rejecting this argument, the Court noted that "we think that the admiralty court, having taken jurisdiction and brought all claimants into concourse, should have given complete relief." *Id.* at 512. The two concurring justices stated that their concurrence rested on the ground that "the owner having invoked, as stated, the jurisdiction in admiralty, it cannot be surrendered in favor of that under the workmen's compensation law of the state." *Id.* at 515. Given the important factual and procedural differences between *Spencer Kellogg* and the present case, *Spencer Kellogg* is not controlling.

The three Fifth Circuit cases cited by the Brockingtons are easily distinguishable. Unlike the present case, all three concerned substantial admiralty rights. The case of *Roberts v. City of Plantation*, 558 F.2d 750 (5th Cir. 1977), involved a potential Jones Act claim, a statutory maritime remedy long recognized as a substantial admiralty right. See, e.g., *Lindgren v. United States*, 281 U.S. 38, 46-47 (1930). The cases of *Ledoux v. Petroleum Helicopters, Inc.*, 609 F.2d 824 (5th Cir. 1980), and *Thibodaux v. Atlantic Richfield Co.*, 580 F.2d 841 (5th Cir. 1978), both concerned the maritime remedy for wrongful death extended to litigants by this Court's decision in *Moragne v. States Marine Lines*, 398 U.S. 375 (1970). The Court specifically designed the *Moragne* remedy to render maritime wrongful death law uniform by creating a general maritime wrongful death action applicable in all waters.

Similarly, the Third Circuit case of *Hagans v. Ellerman & Bucknall Steamship Co.*, 318 F.2d 563 (3rd Cir.

1963), involved a substantial admiralty right under the decision of *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 350 U.S. 124 (1956). Applying the *Ryan* doctrine, the *Hagans* court held that a longshoreman could sue the shipowner for breach of warranty of seaworthiness and for negligence and that the shipowner could claim an indemnity from the stevedore employer, even though the longshoreman had been a beneficiary under the state workers' compensation act. The case of *Bagrowski v. American Export Isbrandtsen Lines, Inc.*, 440 F.2d 502 (7th Cir. 1971), also concerned application of the *Ryan* doctrine. The precise issue in the *Bagrowski* case was "whether the Wisconsin Workmen's Compensation Act may preclude recovery by the shipowner for indemnification for breach of implied warranty by the stevedor-contractor." *Bagrowski*, 440 F.2d at 507. Applying the substantial admiralty right of *Ryan*, the *Bagrowski* court answered the question in the negative.

The decision in the case of *Murphy v. Woods Hole, Martha's Vineyard, and Nantucket Steamship Authority*, 545 F.2d 235 (1st Cir. 1976), represents a balancing of federal and state interests. The plaintiff was a land-based harbor worker who fell within the "twilight zone" of concurrent coverage between state and federal compensation acts, an extension of the "maritime but local" doctrine. *Davis v. Department of Labor & Indus.*, 317 U.S. 249 (1942). The plaintiff in *Murphy* received benefits under the Massachusetts Workmen's Compensation Act. Thereafter, the plaintiff and his wife brought suit against his employer on a negligence theory and for loss of consortium. *Murphy*, 545 F.2d at 236. In denying this claim, the First Circuit gave effect to the exclusive remedy provisions contained in state law and in the Longshore and Harbor Workers' Compensation Act. Although noting that the plaintiff's claim was cognizable in admiralty, the court found that the state exclusive remedy provision should be given effect. *Id.* at 240-41.

The *Murphy* court framed the question before it as "whether in these interstices of admiralty tort jurisdiction, the federal courts should give effect to exclusivity features within the state workmen's compensation law that are comparable to those found in the federal law." *Id.* at 241. The court answered the question in the affirmative, finding "good reason to give effect to the state waiver provision, and to interpret the federal negligence remedy in harmony with overall Congressional, no less than state, expectations." *Id.* The court concluded that "where we deduce a federal policy in conformity with the state's, there can be no reason to deny effectiveness to the state provision." *Id.*

V. EXCLUSIVE REMEDY FEATURE REPRESENTS IMPORTANT STATE INTEREST

The local character of the parties and the land-based nature of their employment indicate that their respective rights should be controlled by state law. The Brockingtons have availed themselves of the benefits of the Georgia Workers' Compensation Act and have been amply compensated by Certified under the Act. Its exclusive remedy feature "abrogates the right to resort to the admiralty court which otherwise would exist." *Millers' Indemnity*, 270 U.S. at 65.

The Georgia Workers' Compensation Act, codified at O.C.G.A. §§ 34-9-1—34-9-389 (1988 and 1990 Supp.), constitutes a statutory compensation scheme designed to protect injured employees by providing them with a prompt and inexpensive resolution of their claims. See *Continental Casualty Co. v. Caldwell*, 55 Ga. App. 17, 18, 189 S.E. 408, 409 (1936). In exchange for assuming a form of strict liability, the employer is protected from lawsuits by the "exclusivity" feature contained in O.C.G.A. § 34-9-11, which provides that workers' compensation benefits are an employee's sole remedy against his employer and are in lieu of any other rights and remedies

he may have against his employer arising from his injury. See *Williams Bros. Lumber Co. v. Meisel*, 85 Ga. App. 72, 74, 68 S.E.2d 384, 387-88 (1951). The exclusive remedy feature contained in O.C.G.A. § 34-9-11 "embodies and implements a major policy consideration underlying [Georgia's] workers' compensation law." *Karimi v. Crowley*, 172 Ga. App. 761, 763, 324 S.E.2d 583, 585 (1984). It is also a "rational mechanism for making the compensation system work" in accordance with the purposes of Georgia law. *Massey v. Thiokol Chemical Corp.*, 368 F. Supp. 668, 676 (S.D.Ga. 1973).

In the present case, the lower courts compared Georgia's significant interest in having a workable compensation scheme with the questionable maritime remedy invoked by the Brockingtons and concluded that Georgia's interest in regulating the relationship between employer and employee should govern. Denying an employer its statutory protection under Georgia law would disrupt the statutory "balance" meant to be achieved and would be potentially harmful to both employers and employees. To hold state compensation law inapplicable to local maritime cases, even in the absence of a substantial maritime remedy, would introduce the very uncertainty sought to be avoided by parties who contract pursuant to such compensation acts.

CONCLUSION

The Southern District of Georgia and the Court of Appeals for the Eleventh Circuit correctly applied this Court's "maritime but local" rule. The exclusive remedy provision of Georgia's Workers' Compensation Act may validly bar an employee's action against his employer, when application of state law recognizes the state's interest in regulating the liability between employer and employee but does not interfere with a substantial admiralty remedy or disrupt the uniformity of general maritime law. The lower courts' decisions are consistent with the case law of this Court and the courts of appeals. This case does not present a special and important reason for granting a writ of certiorari. The respondent Certified Electric, Inc., respectfully requests that the Court deny the petition for writ of certiorari.

Respectfully submitted,

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